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## 2 Teleconference

3  
4 UNITED STATES DISTRICT COURT  
5 SOUTHERN DISTRICT OF NEW YORK

6 CHARLES OAKLEY,

7 Plaintiff,

8 New York, N.Y.

9 v.

10 17 Civ. 6903 (RJS)

11 JAMES DOLAN, et al.,

12 Defendants.

13 December 22, 2020  
14 10:00 a.m.

15 Before:

16 HON. RICHARD J. SULLIVAN,

17 Circuit Judge sitting by designation

18 APPEARANCES (via Skype video/teleconference)

19 WIGDOR LLP

20 Attorneys for Plaintiff

21 BY: DOUGLAS H. WIGDOR

22 RENAN F. VARGHESE

23 - and -

24 PETRILLO KLEIN &amp; BOXER LLP

25 Attorney for Plaintiff

BY: NELSON A. BOXER

JOHN "JACK" ALLEN, Student Extern

GIBSON, DUNN &amp; CRUTCHER, LLP (NY)

Attorneys for Defendants

BY: RANDY M. MASTRO

DECLAN T. CONROY

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1 (Video/teleconference initiated at 9:00 a.m.)

2 (Discussion off the record regarding setup)

3 (Time noted at 10:16 a.m.)

4 THE CLERK: Good morning, Judge Sullivan.

5 THE COURT: OK. Can you see and hear me?

6 UNIDENTIFIED SPEAKER: I can.

7 THE CLERK: Yes.

8 THE COURT: All right. So I'm not sure what the  
9 problem was but I'm here now after several failed attempts.

10 So let me just call the case.

11 This is Oakley v. Dolan, et al., 17 Civ. 6903.

12 Let me take appearances. For the plaintiff?

13 MR. BOXER: Good morning, your Honor. Nelson Boxer,  
14 Petrillo Klein & Boxer, and Doug Wigdor, from Wigdor LLP, for  
15 the plaintiff.

16 THE COURT: OK. Mr. Boxer, Mr. Wigdor, good morning  
17 to you.

18 Can you hear me and see me all right?

19 MR. BOXER: I can.

20 MR. WIGDOR: Good morning, Judge.

21 THE COURT: Good morning.

22 All right. And for the defendants?

23 MR. MASTRO: Yes, your Honor. Randy Mastro and Declan  
24 Conroy from Gibson, Dunn & Crutcher.

25 A pleasure to see you, your Honor.

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1                   THE COURT: All right. Mr. Mastro, Mr. Conroy, I can  
2 see and hear you all right. Can you see and hear me and  
3 Mr. Wigdor and Mr. Boxer OK?

4                   MR. MASTRO: Yes, your Honor.

5                   MR. CONROY: Good morning, Judge.

6                   THE COURT: All right. Let me just make sure we have  
7 the court reporter on the line.

8                   (Pause)

9                   THE REPORTER: Yes, your Honor. I just had to come  
10 off mute.

11                  THE COURT: OK. Great. Thank you. Let us know if  
12 you are having trouble hearing.

13                  So, OK, without repeating sort of all the history in  
14 this case, this case began back in 2017. The initial complaint  
15 was filed in September, I think it was, based on an incident  
16 that occurred at Madison Square Garden in February of 2017.  
17 The original complaint had a number of different causes of  
18 action, leading with defamation. I think there were three --  
19 two or three defamation claims, a libel claim, a slander claim.  
20 There was an assault claim, a battery claim. There was a false  
21 imprisonment claim. There was also an abuse of process claim,  
22 a denial of public accommodations, and violations of the  
23 Americans with Disabilities Act claim. There was a violation  
24 of the New York State Human Rights Law claim. I think that was  
25 all of them or most of them.

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1           In any event, there was a motion to dismiss that led  
2 to an amended complaint which had most of the same claims. I  
3 ultimately ruled on that motion. I dismissed everything.  
4 There was an appeal. The Court of Appeals affirmed on  
5 everything but the assault and battery. They sent that back in  
6 a short opinion.

7           And so following that, following the mandate for the  
8 appeal, the defendants submitted a letter on  
9 December 7th requesting a premotion conference to seek a motion  
10 to -- let me start over. They sought a premotion conference in  
11 connection with a contemplated motion for summary judgment.

12          I then got a response to that letter on  
13 December 11th from plaintiffs as well as a separate premotion  
14 letter on December 11th from the plaintiffs seeking to amend  
15 the complaint for a second time and attaching a proposed second  
16 amended complaint. On December 17th, I got a three-page letter  
17 response. All in keeping with my individual practices.

18          So not every district judge does it this way. I  
19 always did. I thought premotion conferences were useful. It's  
20 just an attempt really to preview the arguments, see if we can  
21 narrow the areas of dispute, see if there is the ability to  
22 make the process more efficient. I never tell a party they  
23 can't make a motion, because parties generally have a right to  
24 make a motion, but I think sometimes it is useful to be able to  
25 discuss with the Court sort of what is the bases for the motion

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1 and to get a preview.

2 So with that spirit in mind, we will chat about these  
3 motions today. I think it probably makes sense to start with  
4 the motion to amend first and then get to the summary judgment  
5 argument.

6 So anybody disagree with that?

7 UNIDENTIFIED SPEAKER: Whatever is your preference,  
8 your Honor.

9 THE COURT: So, counsel, if you could state your name  
10 each time you speak just because, you know, the court reporter  
11 will not know your voices. Maybe by the end of this he will  
12 but at this point he doesn't. So just state your name each  
13 time. That can seem a little repetitive but makes for a much  
14 cleaner transcript, and that's in everyone's interest. OK?

15 So let's then start with the motion to amend. The  
16 opposition basically talks about several bases for me to deny  
17 that motion. Maybe I'll ask -- who is carrying the ball here?  
18 Mr. Boxer?

19 MR. BOXER: I am, your Honor.

20 THE COURT: OK. So I guess the arguments articulated  
21 in the December 17th letter from Mr. Mastro focus on law of the  
22 case and res judicata, also the lack of any new evidence, and  
23 then sort of a merit-based argument as to time bar and  
24 failures -- you know, basically the failure to be able to prove  
25 this based, I think, on the video.

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1           So, I think I'm less focused on law of the case, but I  
2 guess I would like to know why it is defendant, who was named  
3 in multiple counts, who was identified as the person who was  
4 sort of the puppet master and directing the removal of  
5 Mr. Oakley, wasn't named in the first two complaints. It seems  
6 to me there is no new evidence here. You seem to be aware of  
7 all of these facts that you are alleging in your proposed  
8 amended complaint, which is where we were at a long time ago.

9           MR. BOXER: This is Nelson Boxer. That is precisely  
10 the question I wanted to start with, your Honor.

11           At the time the amended complaint was filed, we did  
12 not have videotape evidence of Mr. Dolan preceding and during  
13 the incident with Mr. Oakley. We had videotape evidence of  
14 Mr. Oakley, and we had evidence of the security guards  
15 approaching him. I don't think it's definitive but we had  
16 that. But we did not have the videotape that was filed with  
17 the defendants' motion to dismiss, which shows Mr. Oakley  
18 walking down to a seat, apparently without incident, sitting,  
19 no one in front of him turning around as if he's acting  
20 boisterous -- I know they contend otherwise but that's our view  
21 of the evidence -- and then a security officer walked over to  
22 Mr. Dolan, who is sitting in the very first row, and they  
23 confer, it appears, whispering for about 40 seconds.

24           THE COURT: OK. Wait a minute. This is in the first  
25 amended complaint. Both the original and the first amended

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1 complaint allege that Dolan directed the security to forcibly  
2 remove Mr. Oakley from the Garden and that the security guards  
3 were carrying out defendant Dolan's orders. So, why does the  
4 fact of videotape alter this somehow? This was the factual  
5 allegations in the original complaint.

6 MR. BOXER: There were. But the videotape, the next  
7 thing that happens is it shows two things: Mr. Dolan giving a  
8 hand signal, after which the security personnel approach and we  
9 allege the assault and battery took place, and after that you  
10 see Mr. Dolan showing two thumbs up, pointing in out at a  
11 distance after Mr. Oakley is removed and dragged out of the  
12 Garden.

13 So while the prior complaint alleged that he directed  
14 them and he, as Executive Chairman of Madison Square Garden,  
15 oversees ultimately the security personnel, what's new is the  
16 evidence I just described. And so while we understood  
17 Mr. Dolan to be involved and responsible for what happens at  
18 Madison Square Garden, we did not have in our possession the  
19 evidence that we think circumstantially demonstrates that  
20 Mr. Dolan acted as an aider and abettor or acted in concert  
21 with the security personnel. It was not in our -- the  
22 40-second consultation and then the hand signal -- it is  
23 actually a 40-second consultation and then a gathering of  
24 troops off to the side of the court and then the hand signal,  
25 the thumbs down, and the security personnel converge on

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1 Mr. Oakley. We weren't able to allege that --

2 THE COURT: Wait a minute. You alleged the fact that  
3 Dolan directed security to forcibly remove Oakley from the  
4 Garden. That is alleged.

5 MR. BOXER: That is.

6 THE COURT: That allegation is enough to assert an  
7 aiding and abetting assault or a battery claim, right?

8 MR. BOXER: I don't think without the videotape we  
9 really had enough to actually state the claim. I appreciate  
10 that it is alleged, and it supports some of our other claims,  
11 but without actually seeing what he did in the moment and the  
12 conference and then the signal, I don't know that that would  
13 have been an overt act that would have survived a motion to  
14 dismiss for aiding and abetting.

15 THE COURT: Directing security to remove him would not  
16 have been sufficient? I mean, I just don't --

17 MR. BOXER: I take your point.

18 THE COURT: Wait. Wait. Wait. It doesn't help us in  
19 cases where there isn't video. It seems to me what you're  
20 saying then is that plaintiffs don't get to bring these claims  
21 because they don't have video that supports allegations that  
22 they've otherwise made in a complaint.

23 MR. BOXER: I'm not saying that.

24 THE COURT: That is a tough argument, I've got to tell  
25 you.

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1 MR. BOXER: OK. I appreciate that.

2 There is a second element here for us, which is we  
3 haven't even started discovery. We don't know what -- I  
4 appreciate that's jumping ahead to part two today. We don't  
5 know what -- who said what to whom, who spoke to Mr. Dolan, who  
6 Mr. Dolan instructed. And our concern is that if we develop  
7 further evidence about Mr. Dolan's aiding and abetting or  
8 acting in concert during the course of discovery and we don't  
9 move to amend at this point, we do run the risk of the defense  
10 arguing that our claim related back to right now, after the  
11 mandate, when we had the videotape that was produced in their  
12 motion to dismiss and that we sat on that evidence and that we  
13 are now out of court if we discover additional evidence to  
14 further support those theories. So it --

15 THE COURT: Wait. I mean, there is a second argument  
16 made by Mr. Mastro that you're time-barred on this because the  
17 one-year statute of limitations has run and there is no  
18 relation back except for a narrow band of instances where there  
19 is a mistake concerning the proper identity of the party. And  
20 there is no mistake here. You alleged in the original  
21 complaint who was pulling the strings -- Mr. Dolan.

22 So, why would this relate back?

23 MR. BOXER: Because we were mistaken in the sense that  
24 we didn't have the evidence on the videotape. We were unaware  
25 of the meeting right before it happened and the instruction he

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1 then gave to remove him at that time. I think to generally  
2 allege that he directs what occurs in Madison Square Garden and  
3 those entities is different from what we're able to allege now  
4 and we were unaware of then.

5 THE COURT: But that's not what was alleged in the  
6 original complaint. It wasn't alleged that he generally  
7 controls Madison Square Garden. It's that he sent the security  
8 folks to do what they did. So, all right.

9 Well, I'm making all of Mr. Mastro's arguments for  
10 him.

11 MR. MASTRO: Yes.

12 THE COURT: Let me give him a chance to respond, and  
13 then I will let you respond after that.

14 MR. BOXER: Thank you, your Honor.

15 THE COURT: Mr. Mastro.

16 MR. MASTRO: Thank you, your Honor.

17 I'll cut right to the point. I think your Honor had  
18 it exactly right. The core of what they're claiming now is,  
19 you know, exactly what they alleged and then argued before your  
20 Honor in both the original complaint, the amended complaint, in  
21 court argument, and in their opposition papers to the motion to  
22 dismiss.

23 And, your Honor, I do find it extraordinary that it  
24 was alleged that Dolan, quote-unquote, directed the removal of  
25 Oakley. It was in fact alleged, your Honor, in both the

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1 complaint and the amended complaint, that the security guards  
2 were then sent, quote, to carry out defendant Dolan's orders,  
3 end quote, and that Dolan was clearly attempting to publicly  
4 humiliate Oakley, end quote. Those are all direct quotes from  
5 their original complaint and their amend complaint.

6 Your Honor, so it is extraordinary to me to say, by  
7 Mr. Boxer, whom I have great respect for, that I appreciate  
8 those allegations were made but somehow that wasn't enough to  
9 state a claim when the core of the claim they're stating now is  
10 exactly that.

11 I have to make one correction to Mr. Boxer, because  
12 Mr. Wigdor admitted in contemporaneous emails in February, you  
13 know, February 18th, that he admitted in contemporaneous emails  
14 that -- I mean 2019 -- that they in fact had all of the  
15 videotape evidence. What did he say? He said, We have both  
16 the public videos and, quote, whatever you gave to the District  
17 Attorney, end quote.

18 And then Jim Walden swore in his declaration -- this  
19 is docket entry number 44, paragraphs 7 through 11 -- swore in  
20 his declaration that, in fact, all of the internal arena cam  
21 footage that was submitted to this Court was in fact given to  
22 the DA's Office that Mr. Wigdor said, quote, whatever he gave  
23 to the District Attorney we had. Your Honor, I don't think it  
24 ultimately turns on that. It's just a fact that we turned all  
25 of that same -- all of that cam footage over to the DA's

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1 Office, and Mr. Wigdor admitted, in contemporaneous e-mails and  
2 it is docket number 43-15, that he in fact had whatever you  
3 gave to District Attorney.

4 And at the end of the day, your Honor, I know your  
5 Honor will recall from their motion papers what they said in  
6 May of 2018. I'm sorry, we're talking 2018 now. He argued  
7 that the video evidence showed Dolan -- this is in their  
8 brief -- speaking at length to the security guards' station  
9 near plaintiff, end quote, looking back at Mr. Oakley, end  
10 quote, signaling the security guard's attention, quote, making  
11 a very clear gesture with his right hand, end quote, and taking  
12 his hands from his head and pointing down toward the ground,  
13 end quote, which led to the, quote, violent confrontation, end  
14 quote, that Dolan later allegedly endorsed with a, quote,  
15 thumbs up gesture, end quote. That was all their description  
16 of events while we were involved in motion practice. They  
17 didn't submit an amended complaint then. They didn't say they  
18 had something to add then specifically about Dolan. They knew  
19 everything from February 2018 on. They had the video footage.  
20 They had the arena cam. They made these arguments in court.  
21 Some of these words mirror what's in their so-called amended  
22 pleading now.

23 I just -- your Honor, I don't want to belabor the  
24 point because I think it is so crystal clear. At the end of  
25 the day, whether they have the footage or not -- and they did

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1 have the footage and admitted it back in February 2018 -- they  
2 had enough to make these accusations against Dolan, to make  
3 him, as you put it, the puppet master or, as we put it, the  
4 centerpiece of this, but they didn't include him in the assault  
5 and battery and both because there is no new evidence here,  
6 because they knew enough to make these outrageous allegations,  
7 which are untrue, but nevertheless allegations that they made  
8 going back to February 2018 and in the motion practice in  
9 May 2018, they had all of that information.

10 They are time-barred. They don't have any claim on  
11 the merits. And they can't claim they made a mistake or  
12 shouldn't have realized that they could have made an allegation  
13 like this. And it goes even deeper than that, your Honor. I  
14 know you said you didn't really want to start with law of the  
15 case or res judicata. But when it comes to res judicata -- and  
16 this is what the Second Circuit has counseled in the L-Tec  
17 Elecs. case -- you have a defendant who is dismissed from the  
18 case. Even if other claims are continuing, unless there was  
19 some fraud or affirmative covering up, game over on Mr. Dolan,  
20 who has already been dismissed. You can't go back later and  
21 say, oh, Mr. Dolan got dismissed, now I want to assert  
22 something new that was basically part of the core case to begin  
23 with.

24 So, your Honor, I think that this is -- I'm not going  
25 to use basketball analogies like slam dunks, but the fact of

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1 the matter is that there really is no basis for an amendment.  
2 There are multiple independent reasons why your Honor should  
3 reject it, as your Honor did before.

4 So, we respect your Honor's rulings. We respect the  
5 Second Circuit's ruling, which expressly affirmed the denial of  
6 leave to amend. And so, for all those reasons, your Honor, I  
7 think it is, you know, game over on amending the complaint at  
8 this point.

9 THE COURT: OK. I will give Mr. Boxer a chance to  
10 respond to that.

11 MR. BOXER: Thank you, your Honor. This is Mr. Boxer.  
12 Three points, your Honor. To repeat what I was  
13 arguing initially, directing the removal, that allegation is  
14 not, in our view, enough to support an assault and battery  
15 claim. It is directing the removal. What we now have from the  
16 videotape is the 40-second meeting, the gathering of troops, so  
17 to speak, the thumbs-down gesture, and then all those people  
18 conferring on Mr. Oakley, so --

19 THE COURT: You do not allege --

20 MR. BOXER: I'm sorry.

21 THE COURT: No, that is all right.

22 MR. BOXER: No, you go ahead.

23 THE COURT: You had that in February of 2018, right?

24 MR. BOXER: I was getting to that.

25 We had that when -- and what Mr. Mastro was just

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1 describing, I believe, was Mr. Wigdor's response to the brief  
2 and motion they filed to dismiss, where the videotape was  
3 produced for the first time to Mr. Wigdor, and I'll get to that  
4 last point in a second.

5 I went back and looked at all the court transcripts,  
6 and Mr. Mastro just referred to it. There was quite a colloquy  
7 on whether or not and when the plaintiff should file an amended  
8 complaint as of right. And there was discussion as to whether  
9 that should occur after the motion to dismiss was filed or  
10 before. And Mr. Wigdor certainly expressed a preference to do  
11 it after, and there was back and forth with the Court as to the  
12 advisability of doing it that way.

13 He chose to do it before, and then landed the motion  
14 to dismiss with the video tape. And precisely the dilemma that  
15 Mr. Wigdor articulated at that conference in fact occurred,  
16 because arguments were made and evidence was shown that we did  
17 not have a chance as of right to incorporate into our  
18 complaint.

19 THE COURT: Right. But in the opposition briefing,  
20 there was a perfunctory throw-away line that, "And if we are  
21 going to lose on this motion, we ask for an opportunity to  
22 amend," with no amended complaint and no discussion as to what  
23 the amendment would consist of. Certainly by the time of the  
24 opposition brief, you had the video, you had the ability to  
25 make this argument, and you didn't make it, right?

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1                   MR. BOXER: At that point we did. At that point we  
2 did. But now they're moving on the pleadings. We've exercised  
3 our amendment as of right, and we're litigating the motion to  
4 dismiss. And so when we lose, now we're out of court and we  
5 don't have the ability to make a motion to amend.

6                   THE COURT: But you had an ability to make a motion --  
7 you can make a motion to amend basically at any time. And the  
8 motion to amend, to file a second amended complaint, didn't  
9 include any specific allegations, didn't say anything about,  
10 ah, we now have this video so we've got to include Dolan in the  
11 assault and battery causes of action. There is nothing like  
12 that.

13                  MR. BOXER: That's correct. And I think that decision  
14 was informed by the premotion conference on the motion to  
15 dismiss and, for better or worse, that's what we did, but  
16 that's the basis for why we argue it's new today.

17                  Lastly, as far as Mr. Wigdor and things he wrote and  
18 said, whatever he received in this case, he did not receive the  
19 video that accompanied the motion to dismiss that showed  
20 Mr. Dolan, as opposed to Mr. Oakley, until the motion to  
21 dismiss. And so we don't -- we understand what mistake, it  
22 requires you to show, and we wouldn't have made the motion, or  
23 we wouldn't have submitted a letter, I should say, unless we  
24 were sure about that. So I just wanted to correct those two  
25 points, and with that I have nothing further to add, your

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1 Honor.

2 THE COURT: OK. All right. So let's pause there and  
3 I think pivot towards the defendants' contemplated motion for  
4 summary judgment, because I guess what Mr. Mastro is saying is  
5 that if I were to grant his motion for summary judgment, it  
6 doesn't much matter whether Dolan is in this thing because that  
7 would end the case on the sole remaining claims for assault  
8 against any and all defendants. Right, Mr. Mastro?

9 MR. MASTRO: Yes, that's completely correct, your  
10 Honor.

11 THE COURT: Let's talk about your contemplated motion.  
12 So I remember vividly, as you do, too, I'm sure, that  
13 you wanted me to consider the video as part of the motion to  
14 dismiss.

15 MR. MASTRO: Yes.

16 THE COURT: And I declined to do that.

17 Now, of course we're in a different posture. So,  
18 certainly I can consider a motion for summary judgment at any  
19 time. I expect -- and in fact I know that Mr. Boxer and  
20 Mr. Wigdor are going to say, well, they need discovery to nail  
21 down various things.

22 I guess one question I have is is there any dispute as  
23 to the authenticity of the videos on which Mr. Mastro is  
24 relying? So Mr. Boxer or Mr. Wigdor, I want --

25 MR. BOXER: There is in the sense that I don't think

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1 we have evidence of its authenticity, and there certainly is in  
2 a sense of completeness, since we didn't receive a videotape of  
3 Mr. Oakley prior to him sitting down. But in the sense that I  
4 am confident that Mr. Mastro would not present something to the  
5 Court that wasn't what it purported to be, I think in practice,  
6 I'm assuming it is what he says it is, but I don't think  
7 they've proven it. And I think there are bigger issues on the  
8 discovery, but I don't want to jump ahead unless your Honor  
9 wants me to go first.

10 THE COURT: Well, it is Mr. Mastro's contemplated  
11 motion so I will let him go first. I mean, I think I  
12 understand the argument. I've known it was coming for awhile  
13 because in the context of the motion to dismiss, I basically  
14 said that sounds like a motion for summary judgment, so it's  
15 not shocking to me that he's making that motion now. He's  
16 relying on the video.

17 I think the video, it seems to me, does contradict a  
18 fair amount of what's in the complaint. And, you know, I think  
19 I made this point earlier, that to the extent that what's  
20 alleged in the complaint turns out to be patently false and  
21 contradicted by video, that would potentially be a basis for  
22 sanctions.

23 So, anyway, Mr. Mastro, I'll give you the floor, and  
24 then I'll give Mr. Wigdor or Mr. Boxer a chance to respond.

25 MR. MASTRO: Thank you, your Honor. I appreciate it.

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1                   To answer you your Honor's first question, obviously  
2 we produced all of the in-the-arena footage and then leading  
3 Oakley out of the arena through the tunnels to where the police  
4 took him away. We obviously produced all of that.

5                   THE COURT: I guess the question is is there some  
6 dispute that this is doctored or is there some dispute that  
7 this is not everything, that there are angles that were  
8 obscured, that there is stuff that happened before and after  
9 that we need to know in order to resolve a summary judgment  
10 motion?

11                  MR. MASTRO: Right. And I am, as an officer of the  
12 court, representing to the Court that we produced the arena cam  
13 footage. It's not -- it's a series of snaps, stills, in  
14 succession; it is not video like some of the other video  
15 evidence. We produced all of that from Oakley's time in the  
16 arena, sitting down, approached, taken out of the arena,  
17 through the tunnels, out of Madison Square Garden. And I don't  
18 think there is any question that that's the case. It was all  
19 turned over to the DA's Office, and then it was turned over to  
20 Oakley's counsel by both the DA's Office and by us.

21                  Now, your Honor -- and I don't think they're really  
22 contesting that, your Honor, at all. Mr. Wigdor, in fact, at  
23 the Second Circuit said the same thing that I did. He said,  
24 you should look at the video, in response to Judge Newman. He  
25 said, I'm happy for you to look at the video. Those are his

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1 quotes. There is no question that it's the authentic arena cam  
2 footage.

3 There is also footage, publicly-available footage,  
4 that Mr. Wigdor has also acknowledged exists and that they have  
5 possession of. One long clip posted on the New York Times,  
6 another on YouTube. ESPN was covering the game, you know, live  
7 nationally at the time and caught part of the incident. That  
8 footage, there is no question that it is authentic footage, and  
9 Mr. Wigdor has acknowledged having that public footage. That  
10 is straight video. And, therefore, I think the Court now has  
11 from several angles of, in terms of the arena cam and in terms  
12 of The New York Times, the ESPN and the YouTube footage, the  
13 Court has, you know, everything that, you know, you -- that  
14 they should need, and they've never had an issue or expressed  
15 an issue about the video footage. In fact, they've encouraged  
16 the courts to look at it after they left your courtroom, your  
17 Honor, they encouraged the appellate court to look at the  
18 footage.

19 Now having said that, your Honor, let's cut to the  
20 heart of the matter. All right? And I think your Honor  
21 already hit on it. I said this when we made our motion to  
22 dismiss, while we thought we had a valid motion, a meritorious  
23 motion regardless. The video footage proves that Oakley's  
24 allegations are demonstrably false. It belies them. They are,  
25 as we have said -- and I don't like to have to say this, we

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1 hoped it would never come to this, your Honor, but they're  
2 fabrications. Mr. Oakley has not told the truth about what  
3 happened that night in his pleading and his many public  
4 statements.

5 The fact of the matter is that the video footage puts  
6 the lie to his assault and battery case. It shows him to have  
7 been the aggressor. It shows him to have slipped to the  
8 ground, not being thrown to the ground, ever. It shows him --  
9 unfortunately I have to say this -- using profanity, being  
10 physically aggressive -- not defensive posture -- pushing,  
11 shoving, hand, fist in face of a security guard so that he  
12 literally reels backwards. Another security guard, you know,  
13 chopping down on his arms and then violently shoving him twice.

14 This is not a man in a defensive posture. This is not  
15 a man who is saying, you know, trying their words, peaceably  
16 behave, not a man who was complying with a request to leave.  
17 It shows him refusing to leave and then getting violent,  
18 aggressive, and, frankly, offensive in the language he used.  
19 And guess what, your Honor. The video footage shows an NYPD  
20 police officer, being the person closest to him immediately in  
21 proximity to him, as he is refusing to leave, because this was  
22 security guards and NYPD.

23 Now, your Honor, I think it's -- I think it's game  
24 over when the videos are considered. And Mr. Boxer's comment  
25 that, oh, the discovery they need, your Honor knows what he's

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1 talking about. It's the same kind of discovery that was  
2 irrelevant on a motion to dismiss. They want to show -- and  
3 it's a false narrative but, nevertheless, it is their  
4 narrative -- they want to show why it was that the security  
5 guards approached Mr. Oakley. What Mr. Dolan said, what  
6 happened before he was approached, all of those things.

7 But as your Honor has held, and as the Second Circuit  
8 made crystal clear, we're down to the short strokes. It is a  
9 revocable license. It could be removed for any reason. And  
10 when he was told to leave, and refused to leave -- in his own  
11 pleading, he says he turned to go back to his seat after being  
12 asked to leave, in his own pleading -- they had the right to  
13 remove him, use, you know, physical acts to remove him. The  
14 short stroke we're down to, your Honor, is whether the physical  
15 force used to remove him was objectively unreasonable. It's  
16 his burden to prove that. The videos totally belie any such  
17 notion.

18 And as your Honor knows from your own cases, the  
19 seminal Supreme Court case that your Honor has cited on  
20 multiple occasions, Scott v. Harris, when you've got the video  
21 evidence, let's go to the video. In the words of the immortal,  
22 you know, Scott v. Harris, when the video blatantly  
23 contradicts, end quote, the allegations that have been made,  
24 OK, when it is a visible fiction, as it is here, OK, it should  
25 be reviewed and viewed in the facts in light of what's depicted

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1 on the video. End of story.

2 And, your Honor, there have not only been multiple  
3 case in the Second Circuit and the Southern District where  
4 courts have granted summary judgment at the predisclosure stage  
5 based on clear, dispositive evidence like this, there is even a  
6 recent case in the Western District of Virginia based on video  
7 evidence, a summary judgment motion at the outset of discovery,  
8 and the court there dismissed based on the video evidence, and  
9 that was the end of the case.

10 I respectfully suggest to your Honor that under these  
11 circumstances, you should look at the video. It is irrelevant  
12 why -- they shouldn't be allowed to amend. Mr. Dolan is out of  
13 the case. This is part of, unfortunately, your Honor, that  
14 public relations game that your Honor told all parties to  
15 please avoid. OK? They want Dolan back in the case. And then  
16 they want to try to depose him and find out what he said to the  
17 security guards and what the security guards said to him and  
18 what were the real reasons. Your Honor knows, you've already  
19 ruled, that doesn't matter. The Second Circuit has ruled that  
20 doesn't matter.

21 The Second Circuit couldn't have been clearer. The  
22 Second Circuit gave an exceedingly narrow path to what little  
23 is left of this case, and expressly rejected Oakley's  
24 contention that, quote, the act of removal was unreasonable,  
25 end quote, and it said that the only question that remains

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1 here, the only question that remains here, is whether, quote,  
2 the security guards used excessive force in accomplishing the  
3 removal.

4 The videos, from multiple angles, show that this was  
5 not objectively unreasonable force, and they show that Oakley's  
6 behavior exacerbated the situation, that he was the aggressor,  
7 that he was the one who compelled the need to use even more  
8 physical force because he refused to leave. And, again, in any  
9 version of their pleading, including proposed, they never  
10 alleged that Mr. Oakley suffered any injury whatsoever from the  
11 removal -- ever.

12 But, your Honor, I would like to go to the videotape.  
13 I have two short clips that will show you the core of the  
14 incident from different angles and I would -- each are about a  
15 minute, maybe one is a little over a minute -- I would like to  
16 show them to the Court now, because I don't ever ask you to  
17 just take my word for it, I present evidence. And the videos  
18 are the evidence.

19 THE COURT: All right. I don't mind -- well, I  
20 wouldn't mind seeing them. They've already been introduced, as  
21 it were, in connection with the motion to dismiss. I didn't  
22 consider it for that purpose.

23 But I think it is useful, Mr. Boxer, for you to  
24 respond to them. OK?

25 MR. BOXER: I actually object to him showing them at

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1       this point because I think your rules preclude showing exhibits  
2       during these conferences, and we got notice of it about 20  
3       minutes ago without sending them to us. But I would like to  
4       first respond to Mr. Mastro's presentation, and then I defer to  
5       your Honor's judgment as to whether these two-minute videos are  
6       worth seeing. But there were two --

7                  THE COURT: Wait. Wait a second.

8                  You've seen these videos, you know what they are;  
9       right.

10                 MR. BOXER: I don't know which portions he has cut and  
11       pasted.

12                 MR. MASTRO: Your Honor, I'm not cutting and pasting.  
13       I'm showing a complete segment for each about a minute, one  
14       from the New York Times video and one from the YouTube video.

15                 And, your Honor, I'll just say this. OK? There's  
16       nothing left in the complaint to support unreasonableness.  
17       When you look at these videos and see how they belie the  
18       allegations in the complaint and proven them to be demonstrably  
19       false, there is nothing left in this complaint, amended  
20       complaint, that could possibly support a finding that Oakley  
21       could meet his burden of objective unreasonableness in the  
22       force that was used. So, I think it would be helpful to the  
23       Court to just see these short videos.

24                 THE COURT: All right. So, Mr. Boxer, you think it  
25       would be better to hear from you before the videos are shown or

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1 after?

2 MR. BOXER: I would appreciate that, your Honor, if I  
3 could.

4 THE COURT: OK.

5 MR. BOXER: There were two glaring omissions in  
6 Mr. Mastro's presentation. The first is what the Second  
7 Circuit actually held, and it described the issue remaining  
8 regarding the assault and battery claims as whether the use of  
9 force was reasonable under the circumstances, which the Court  
10 stated is generally best left for a jury to decide.11 THE COURT: Well, they seemed to be very impressed  
12 with your complaint, which insisted that Mr. Oakley was thrown  
13 onto the ground by six officials. So, are you aware of any  
14 video that shows that?15 MR. BOXER: Your Honor, the video shows what it shows.  
16 I see him thrown to the ground on the video.

17 THE COURT: Uh-uh-uh-uh. Answer my question.

18 Are you aware of any video, anyplace, that showed  
19 Mr. Oakley being grabbed by six officials and thrown to the  
20 ground?21 MR. BOXER: I see him being grabbed and I see him  
22 being thrown to the ground. I can't say I have read it, I've  
23 looked at it recently to count the number of people who were  
24 doing the throwing.

25 THE COURT: I think what's going to be very important

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1       in this motion for summary judgment is whether or not there is  
2       any evidence that supports that characterization in paragraph  
3       47 of the complaint, of the amended complaint.

4                    MR. BOXER: OK.

5                    THE COURT: So there is another point you wanted to  
6       make, I think?

7                    MR. BOXER: Yes. The Court even said in the criminal  
8       context whether an arrest and a force used in an arrest is  
9       reasonable depends on the severity of the crime that's charged.  
10      So what happens before, what's known before, what's known when  
11     an officer, a security personnel approaches a person to make an  
12     arrest or in this case to remove somebody is all part of the  
13     circumstances of whether or not their conduct was reasonable.  
14      And in this case -- so, Mr. Mastro doesn't mention that.

15                  But more telling is he keeps saying that he's produced  
16     all of the footage in the arena so all that you need to look at  
17     is what happened in those moments after Mr. Dolan gave the  
18     signal to remove Mr. Oakley. But in fact, the defendants have  
19     already put in issue what happened before Mr. Oakley even got  
20     to his seat on the question of whether the force they used was  
21     reasonable under the circumstances. And we haven't seen a  
22     single video of him walking that the Garden, walking through  
23     the hallways, and getting to his seat.

24                  But two days after the incident, Mr. Dolan, on Michael  
25     Kay's Show, said from the moment he stepped into the Garden, I

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1 mean the moment he walked through the first set of doors, he  
2 began with this abusive and disrespectful behavior, and it  
3 accelerated and accelerated all the way down to his seat.  
4 According to what the Second Circuit held, those are  
5 circumstances that are relevant to whether the use of force and  
6 the number of security personnel was reasonable. And maybe  
7 they'll prove that. Maybe in discovery they will show that he  
8 was acting, Mr. Oakley, abusive behavior all the way down to  
9 his seat so that when he gives the signal, Mr. Dolan, and six  
10 or seven or however many people surround Mr. Oakley, that was  
11 reasonable under the circumstances.

12 THE COURT: Wait. Wait. Wait.

13 So your position now is that surrounding Mr. Oakley  
14 constituted excessive force?

15 MR. BOXER: No. I'm saying that the whole  
16 circumstance of how he was removed from his seat is all part of  
17 the circumstances as to whether the conduct was reasonable.  
18 And what we're left with here are some handpicked videos by the  
19 defense to try to prove as a matter of law that under these  
20 circumstances it was reasonable. But even the videos, they  
21 don't -- they sort of start after they already claim the  
22 problem existed.

23 If it's true that Mr. Oakley was abusive and  
24 disrespectful all the way down to his seat, and let's just say  
25 arguably they knew that, then that heightens the amount of

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1 force that would be reasonable to remove him. We have no sense  
2 of that.

3 THE COURT: Stop. Stop.

4 The first inquiry I have is whether there was really  
5 any kind of force used to remove him and what that consisted  
6 of. So to the extent that there is evidence that shows him  
7 being thrown to the ground, I think that that needs to be  
8 produced. But it doesn't sound to me like there is any such  
9 evidence.

10 To the extent that the guards refused Mr. Oakley's  
11 repeated requests that he be allowed to stand up -- that's  
12 paragraph 48 -- again, I'm not sure that there is video that  
13 supports that. Mr. Mastro says not, and what I've seen  
14 suggests that that is not accurate either, that he wouldn't get  
15 up and then he wouldn't leave. He basically grabbed onto the  
16 railing so that he wouldn't be removed from the Garden.

17 MR. BOXER: I saw video when he was off to the side  
18 where he was trying to stand up and they wouldn't allow it.  
19 But even who said what to whom, even what any bystanders heard  
20 Mr. Oakley said or didn't say, what the security personnel said  
21 or didn't say, all of those are facts that are relevant to  
22 whether the use of force was reasonable, and we're in a  
23 situation where --

24 THE COURT: It may or may not be.

25 MR. BOXER: We're entitled to discovery on that.

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1                   THE COURT: No, you're not, even not necessarily. If  
2 it is discovery that wouldn't make a difference, you are not  
3 entitled to it.

4                   Now, look, it seems to me the way this goes is they  
5 make their motion, you respond to it, and you respond to their  
6 56.1 statement as to what facts you're disputing and the bases  
7 for it. And under 56(b), if you need additional discovery, you  
8 articulate what it is you need and why it is you're not able to  
9 respond to certain factual allegation or legal arguments. And  
10 I think that's a lot easier to do after you see what their  
11 motion is.

12                  But it is not the case that you're just entitled to  
13 any discovery that you want at this point. It has to be  
14 discovery that is relevant to the lone standing cause of  
15 action. And if the video shows that there was no force, then  
16 it doesn't much matter what conversations they had or didn't  
17 have before that happened, it seems to me.

18                  MR. BOXER: Well, I think the video shows force. But,  
19 for example, when they're claiming that their justification --  
20 of course they can remove him for any reason, he is a licensee,  
21 but they haven't said that. And they didn't say we sent two  
22 people over to say can you please leave because we feel like  
23 it. What they've said, and they've said publicly, is that from  
24 the moment he entered the gates, he was boisterous, he was  
25 abusive, he was abusive with the support personnel, with the

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1 waitress, and that informed the reasonableness of what they  
2 did. And we should be able to test that, to see whether in  
3 fact they did -- that's the whole essence of the claim that the  
4 Second Circuit found, that the jury should decide whether under  
5 all the circumstances the use of force, the alleged assault and  
6 battery, was reasonable. And what we're faced with now is  
7 after all this time they're going to produce only video that  
8 they have in the arena, even though they said everything before  
9 that is relevant, and asking the Court to enter judgment  
10 summarily without giving us a chance to even support our case.  
11 And I don't think that's what is fair, and I don't think that's  
12 what the Second Circuit was suggesting in its decision.

13 THE COURT: Well, I mean, I'm not sure what they were  
14 suggesting. The decision is what it is. But it is back here  
15 now. There is a motion for summary judgment being  
16 contemplated. And, you know, if there is no disputed issue of  
17 fact that requires discovery, then there is no need for  
18 additional discovery.

19 So, all right. I mean, look, I think that's certainly  
20 the law in this circuit. It is the law of the land.

21 So, Mr. Mastro, you wanted to show your video?

22 MR. MASTRO: Yes, your Honor. Would you like me to  
23 respond briefly to Mr. Boxer first before we show the videos?  
24 Whatever you prefer.

25 THE COURT: Whatever you want to do.

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1                   MR. MASTRO: Thank you, your Honor. I really  
2 appreciate it.

3                   You know, Mr. Boxer said they can remove him for any  
4 reason. That's right. What the Second Circuit actually held,  
5 because I like to use their exact language, was that, Although  
6 Oakley did contend incorrectly that the act of removal was  
7 unreasonable, his additional and actionable claim was that the  
8 security guards used excessive force in accomplishing the  
9 removal, end quote. That's on page 3. And it's his burden to  
10 show it was objectively unreasonable force.

11                  I also heard Mr. Boxer say he thinks he saw Mr. Oakley  
12 thrown to the ground. OK? Two points in the videos to focus  
13 on -- the first one where he clearly trips and falls; the  
14 second one where he slides to the floor and then he goes on to  
15 resist. You will see both. The Times footage picks up as he's  
16 first getting up but then shows clearly what happened as he's  
17 being taken out of the arena and goes to the ground a second  
18 time. The YouTube video shows both and has a very clear view  
19 of the fact that he trips and falls himself. Nobody throws him  
20 to the ground at any point.

21                  I heard Mr. Boxer say, well, in a criminal case, the  
22 police, they have more latitude, da-da-da-da. You will see the  
23 NYPD is there every step of the way, including right in front  
24 of Mr. Oakley as he is yelling profanities at the NYPD officer  
25 and the security guards, as he towers over them.

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1                   And, your Honor, I would just, you know, conclude with  
2 this before we show the videos. It's totally irrelevant, now  
3 that the Second Circuit has ruled and affirmed your Honor in  
4 this regard, you know, the act of removal, they had the right  
5 to remove him. I heard Mr. Boxer say they could remove him for  
6 any reason, and that's exactly what the Second Circuit said.  
7 So all those preliminaries where he wants to go on fishing  
8 expeditions and try and drag Mr. Dolan back in and who said  
9 what to whom and how did Oakley act when he was out on the  
10 street before he came into the Garden, totally irrelevant. The  
11 only issue now is was the force used not objectively -- was the  
12 force used objectively unreasonable. Oakley's burden.

13                  It was not. The video proves that. That is the  
14 definitive evidence. And that's what court after court has  
15 said, you know, and we can cite half a dozen more cases to your  
16 Honor but we only had a three-page letter. But from the  
17 Supreme Court on down, that's the definitive word, when you  
18 have conclusive video or audio evidence, and your Honor has  
19 ruled that in other cases.

20                  So, let's go to the videotape. Let's start with the  
21 New York Times and then we'll go to YouTube, and they're going  
22 to show from different angles the two incidents. The Times  
23 picking up as Oakley is getting up the first time and what  
24 happens from there and as he's being taken out, the second  
25 video showing both how he trips and falls initially and then

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1 what happens on the second incident when he goes to the ground.

2 Declan, take it away.

3 (Pause)

4 THE COURT: I don't hear you, Mr. Conroy. I think  
5 you're muted.

6 MR. CONROY: Hi. Can you hear me now?

7 THE COURT: Yes.

8 MR. CONROY: I think I am going to need Ms. Miller to  
9 be a presenter on the settings so I can show the video.

10 THE COURT: OK. Can we do that?

11 MR. CONROY: I think I just got it right now.

12 (Pause)

13 THE COURT: Is there a glitch or how are we doing?

14 MR. CONROY: It's loading currently. The first video  
15 is being posted.

16 THE COURT: OK.

17 (Pause)

18 MR. CONROY: We are done with the first video.

19 MR. MASTRO: That was The New York Times, your Honor.  
20 The next one is YouTube.

21 THE COURT: OK.

22 MR. CONROY: Just give me one second to load it.

23 THE COURT: All right. So when you say The New York  
24 Times and YouTube, of course that's not who prepared the video,  
25 that's just where it was loaded, right?

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1 MR. MASTRO: Correct, your Honor.

2 THE COURT: Mr. Boxer, while we're waiting, are you  
3 disputing the authenticity of this video?

4 MR. BOXER: The authenticity, no. I trust that what  
5 Mr. Mastro is presenting is what he says it is. But I think  
6 it's a snapshot. And as I said, when the Circuit says whether  
7 the use of force was reasonable under the circumstances and the  
8 defendants are saying the reason for they did what they did is  
9 what happened when he first walked into the Garden, I think  
10 those are all relevant circumstances to whether the use of  
11 force was reasonable. So I'm sure that's an accurate --

12 THE COURT: I really --

13 MR. BOXER: I have no doubt it is what was on the New  
14 York Times or the YouTube on that.

15 THE COURT: I just worry that --

16 MR. BOXER: As I said before --

17 THE COURT: Can you hear me, Mr. Boxer?

18 MR. BOXER: Yes.

19 THE COURT: OK. I just worry that the goal here is to  
20 make this about the reasons as opposed to the force.

21 MR. BOXER: Well --

22 THE COURT: And I'm not doing this for the back page  
23 of the papers and I'm not doing this for Page 6. This is a  
24 motion for summary judgment on the lone remaining causes of  
25 action in this complaint, so --

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1                   MR. BOXER: Understood. Understood.

2                   And to be clear, we're not doing it for that purpose  
3 either. I brought up the police context because the Circuit  
4 brought it up and said for the point that what an arresting  
5 officer knows he's walking into based on what he's arresting  
6 the defendant for bears on the reasonableness of the force they  
7 can use.

8                   THE COURT: OK. The reasonableness of this is that  
9 the owner can remove anybody, any licensee, from the arena,  
10 so --

11                  MR. BOXER: He can, but he can't use unreasonable  
12 force.

13                  THE COURT: Yes.

14                  MR. BOXER: So on that question, it's not designed for  
15 the back page or for any of those things. By their own words  
16 in public media, the circumstances that they reacted and then  
17 used force included everything Mr. Oakley did as he walked into  
18 the arena, and that's relevant. And I'm not suggesting how  
19 your Honor, hearing all that evidence and watching all the  
20 videotapes, watching the videotape when he walks in the arena,  
21 you know, what a jury would do with all of that, but we're out  
22 of court if we don't even get a chance to explore those things.

23                  THE COURT: Well, I'm not sure that that's true. If I  
24 walk into Madison Square Garden and I just had a hat that the  
25 owner objects to, I can be asked to leave.

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1 MR. BOXER: Correct.

2 THE COURT: But the fact that I orderly bought a  
3 hotdog and a coke before then strikes me as irrelevant. So --  
4 and it seems to me also irrelevant to know why the owner took  
5 such umbrage at my hat. It seems to me that the focus has got  
6 to be on the force. And if the force is reasonable, then I  
7 don't really need much to care about what happened at the  
8 concession stand.

9 Anyway, back to the video. I'm not deciding anything  
10 today.

11 MR. BOXER: OK. I have a response to that but I will  
12 keep it to myself.

13 THE COURT: OK. So let's go to the second video.  
14 This is the so-called YouTube video.

15 MR. CONROY: Yes. This is docket 43-4.

16 THE COURT: OK. Thanks.

17 (Pause)

18 MR. MASTRO: Thank you.

19 THE COURT: OK. All right. I assume that will be  
20 part of any submission on the motion for summary judgment.

21 MR. MASTRO: Yes, your Honor.

22 THE COURT: I will tell you, candidly, I didn't see  
23 anything there that would support a characterization of  
24 Mr. Oakley being thrown to the ground.

25 Mr. Boxer, did you think that reflected him being

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1 thrown to the ground?

2 (Pause)

3 Mr. Boxer, are you there?

4 (Pause)

5 Mr. Boxer, you are getting -- wait. That's better.

6 Go ahead. I can't see you but I can hear you.

7 MR. BOXER: I'm sorry, I didn't -- (inaudible)

8 THE COURT: Can you hear me, Mr. Boxer?

9 (Pause)

10 MR. BOXER: Yes, but I must admit it is freezing a  
11 little. I don't know if that video impacted it at all.

12 Let me try one other thing.

13 Can you hear me now?

14 THE COURT: Yeah, I can hear you.

15 MR. BOXER: That's better. I can hear you fine now.

16 I'm sorry. I didn't hear what you said before. I  
17 apologize.

18 THE COURT: I'm just asking, are you suggesting that  
19 anything we saw in those two videos constituted Mr. Oakley  
20 being thrown onto the ground?

21 MR. BOXER: Well, at the end of the second video, it  
22 appears -- I still couldn't count how many were around him,  
23 whether it was six, but it didn't appear to me like he slipped,  
24 and they were holding him and he fell.

25 THE COURT: You think he was thrown to the ground.

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1 MR. BOXER: Yeah, then he ends up on the ground.

2 THE COURT: That's not what I asked, not what I asked.

3 MR. BOXER: OK.

4 THE COURT: I'll read you the statement: "Mr. Oakley  
5 was forcibly turned around so his back faced security, grabbed  
6 by six officials and thrown onto the ground."

7 So is something that we just saw in your mind him  
8 being thrown onto the ground, as reflected in paragraph 47 of  
9 the complaint?

10 MR. BOXER: I thought what we saw at the end of the  
11 second video showed him being thrown to the ground.

12 THE COURT: OK.

13 MR. BOXER: I -- it went by fast. I couldn't count  
14 the people. And it sort of highlights the point. It is one  
15 angle of what happened. All those people there, what they say  
16 happened, what they observed, I appreciate there is video, but  
17 I don't think it settles the question of what happened.

18 THE COURT: All right. So let's now then talk about a  
19 briefing schedule.

20 What I have in mind is parallel briefing on the two  
21 motions. So, each of you would file your motions and then the  
22 other side would respond on the same date and replies on the  
23 same date. That's what I'm inclined to do.

24 So, how long do you think you need to file -- I think  
25 probably a summary judgment motion requires a little more than

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1 a motion to amend. So, Mr. Mastro, how long do you think you  
2 need to file your motion for summary judgment?

3 MR. MASTRO: Your Honor, I'd appreciate three to four  
4 weeks. It is the holidays.

5 THE COURT: Sure. That's fine with me. What do  
6 you -- you pick a date. You tell me.

7 MR. MASTRO: OK. Perhaps I should ask Declan, the  
8 brains of the operation. How long do we need?

9 MR. CONROY: I think four weeks.

10 MR. MASTRO: OK.

11 THE COURT: So four weeks puts us at -- what is today,  
12 the 22nd -- one, two, three, four, the 19th of January; is that  
13 OK?

14 MR. MASTRO: That will be great, your Honor. Thank  
15 you very much.

16 THE COURT: Do you want the Friday, the 22nd of  
17 January?

18 MR. MASTRO: Sure, your Honor. That will be  
19 fantastic. Thank you. I appreciate it.

20 THE COURT: Mr. Boxer, Mr. Wigdor, that's OK for you  
21 to do your opening brief on your motion to amend?

22 MR. BOXER: That's fine, your Honor.

23 THE COURT: OK. So the 22nd.

24 And then, Mr. Boxer, I'll ask you, how long do you  
25 think you need to respond to the motion for summary judgment?

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## Teleconference

1 Look, candidly, I don't know that I need much more briefing on  
2 the motion to amend. That is pretty straightforward. It's a  
3 legal issue. I've got the proposed complaint. You're  
4 certainly welcome to brief it but don't feel compelled. I  
5 mean, you know, only submit what you think will help.

6 MR. BOXER: OK. Understood.

7 THE COURT: But in terms of responding to the summary  
8 judgment, that is probably going to require a little more  
9 effort on your part. How long do you think you need to do  
10 that.

11 MR. BOXER: I was thinking three to four weeks to  
12 respond, so let's say four weeks. And if there is no reply,  
13 then it would be fully submitted at that time.

14 THE COURT: OK. So the 19th of February?

15 MR. BOXER: Thank you, your Honor.

16 MR. MASTRO: Your Honor.

17 THE COURT: Yes.

18 MR. MASTRO: If I might? I think it would be an aid  
19 to the Court in a summary judgment motion in a major case if we  
20 had the opportunity to put in a brief reply to their --

21 THE COURT: I want a reply. That's fine. I think a  
22 reply would be useful. But I'm asking a different question  
23 first.

24 I think four weeks is probably more than enough time  
25 for you to respond to the motion to amend.

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## Teleconference

1           Do you agree with that?

2           MR. MASTRO: I do, your Honor.

3           THE COURT: OK.

4           MR. MASTRO: If you want us to respond, you know, in  
5 two weeks, that's fine.

6           THE COURT: Let's keep it on the same track. I just  
7 think it's easier.

8           MR. MASTRO: No problem.

9           THE COURT: OK. So, OK. So your opposition brief on  
10 the motion to amend, by the 19th of February. And then reply  
11 briefs on the two motions -- nobody has to do a reply brief,  
12 but if you want to, you can do it.

13           So, Mr. Mastro, how long do you think you need for a  
14 reply?

15           MR. MASTRO: If we could have another ten days, your  
16 Honor?

17           THE COURT: OK. That puts us at March 1st or 2nd.

18           MR. MASTRO: I think that's right, your Honor. Could  
19 we have Monday?

20           THE COURT: Do you want Monday? Tuesday? I don't  
21 care, Tuesday --

22           MR. MASTRO: Tuesday is good. Thank you, your Honor.

23           THE COURT: Mr. Boxer, if you want to do a reply for  
24 the motion to amend, you can also then get something in by  
25 Tuesday, March 2nd. OK?

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## Teleconference

1 MR. BOXER: Thank you, your Honor.

2 THE COURT: All right. So I'll issue an order that  
3 just memorializes those dates.

4 I'm not prejudging this. I think a preview like this  
5 is helpful. That's why I do it. But, obviously, I'm going to  
6 read the briefs, I am going to look at the attachments, I'm  
7 going to consider all the arguments.

8 Mr. Mastro.

9 MR. MASTRO: Your Honor, we had also requested in the  
10 interim, pending disposition of the motion, a stay of  
11 discovery.

12 THE COURT: Yes, I am going to stay discovery, and  
13 then that can be addressed in the opposition to your motion for  
14 summary judgment. That is built into the rule. If Mr. Boxer  
15 and Mr. Wigdor are arguing that they can't possibly respond to  
16 your summary judgment motion without additional discovery, they  
17 then will articulate that consistent with Rule 56(d). OK?

18 MR. MASTRO: Thank you very much, your Honor. I  
19 really appreciate it.

20 THE COURT: That is all right. That's why I do this.

21 So, I don't know, some people like these premotion  
22 conferences, some people don't. I find them helpful. I think  
23 it lets me hit the ground running once the motion is filed.

24 So with that, I will -- I'm prepared to adjourn unless  
25 there is anything else we need to cover today.

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## Teleconference

1                   MR. BOXER: Just briefly, your Honor. If your Honor  
2 is going to schedule an appearance before your Honor, I do have  
3 some court commitments the week of March 8th and, in theory, a  
4 trial the week of March 16th. Who knows if that will happen.

5                   THE COURT: OK.

6                   MR. BOXER: So if that is going to happen later, I can  
7 always consult with your deputy clerk.

8                   THE COURT: I'll tell you, what I would typically do  
9 is see the briefs and then decide whether I need additional  
10 argument beyond what we had today.

11                  MR. BOXER: Thank you.

12                  THE COURT: And if I think we do, then I will schedule  
13 something, but I will probably have my judicial assistant,  
14 Ms. Miller, contact you to see when you are available and then  
15 I will issue an order setting forth that date. OK?

16                  MR. BOXER: I appreciate that, your Honor. Thank you.

17                  THE COURT: All right. Good.

18                  OK. So, thank you all. This was very, very helpful  
19 to me. Let me thank the court reporter.

20                  If anyone needs a copy of this transcript, you can  
21 take that up with the court reporter either now or later  
22 through the website.

23                  Let me wish everybody the happiest of holidays and the  
24 healthiest of holidays. And, who knows, someday maybe we'll be  
25 in the same room again. But in the interim, I thought this

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## Teleconference

1 worked reasonably well, with a couple of little glitches, but  
2 overall this was pretty good. So, thanks.

3 MR. MASTRO: Thank you, your Honor. Happy holidays.

4 MR. BOXER: You too, your Honor. Happy and healthy  
5 new year.

6 (Adjourned)

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